IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8833 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SMT. SAMKUNVAR V. PARMAR WIDOW OF VITHALJI D. PARMAR - Petitioner(s)

Versus

STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :

MR ANAND L SHARMA for Petitioner(s) : 1,
MR.L.B.DABHI, ASST. GOVERNMENT PLEADER for Respondent(s) : 1 - 2, 5,
NOTICE SERVED BY DS for Respondent(s) : 1, 5,
RULE SERVED BY DS for Respondent(s) : 2 - 4.
MR RA MISHRA for Respondent(s) : 3,
MR ANSHIN H DESAI for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 07/09/2005

ORAL JUDGMENT

The petitioner, aged about 82 years in the year 2001, has approached this Court with this petition under Article 226 of the Constitution of India praying for

issuance of appropriate writ, order or direction, directing the respondents to fix the family pension of the petitioner with effect from the date of demise of her husband and to make payment thereof with interest thereon @ 15% per annum till realisation of payment. She has also prayed for a compensation for the hardships that she is required to face for last more than 30 years, because of inaction on the part of the respondents.

2.The petitioner's husband Vitthalji Dahyabhai Parmar was working as an Octroi Clerk in Visavadar Nagar Palika as a permanent employee from 7/11/1951 and expired on 8/1/1968 while in service, after putting in actual service of 16 years and 2 months with the said Nagar Palika.

2.1The petitioner made several requests for grant of family pension to her under the pension scheme of the Government as revised from time to time. But, ultimately, vide communication dated 3/8/1988 bearing No.231, the petitioner was informed that since her husband expired on 8/1/1968, no pension papers were required to be prepared, as she was not entitled to claim family pension. She however, pursued her right by addressing communication / application to various

authorities and ultimately, in response to the application dated 6/12/1996, the Regional Director of Municipalities, Rajkot by communication dated 24/1/1997 wrote to the Nagarpalika to prepare papers for family pension in favour of the petitioner in light of the Government Resolution dated 5/7/1994 and 21/1/1995 (Annexure -B). Since, no further action was taken, the petitioner sent reminders on 1/7/1998 and 8/6/1999 to the Chief Officer of the Municipalities of the Nagarpalika. Since, nothing happened, the petitioner again wrote a letter on 2/5/2000 to the Chief Officer of the Nagarpalika and endorsed copy thereof to the District Development Officer, Junagadh and District Collector, Junagadh. The District Development Officer by communication dated 16/5/2000 directed the Chief Officer of the Nagarpalika once again to prepare pension papers, as directed by the Regional Director of Municipalities, but, nothing happened. Therefore, the petitioner has moved this petition seeking reliefs as stated above.

3.Heard, learned Advocate Mr.A.L.Sharma for the petitioner, learned A.G.P., Mr.L.B.Dabhi for the respondents No.1, 2 and 5, learned Advocate Mr.Mishra appears for respondent No.3 and learned Advocate

Mr.Anshin H. Desai appears for respondent No.4.

4.Learned Advocate Mr.Sharma submitted that even as per communication by the Director of Municipalities, as well as, District Development Officer, the petitioner is entitled to family pension. Mr.Sharma submitted that it is true that when the husband of the petitioner expired, there was no pension scheme, applicable to the employees of the Municipalities / Panchayat. But, subsequently, the Government introduced such scheme and later on expanded / extended the applicability of the scheme to all the employees of Panchayat, who retired after 1/5/1960, and therefore, the petitioner's husband having expired in the year 1968, the petitioner would be entitled to family pension.

4.1Mr.Sharma also indicated that the deceased had put in services of about 16 years and 2 months and expired while in service and therefore, there is no question of completing qualifying the length of service. Because, in such situation, for eligibility to family pension, service of 5 years would be necessary. Learned Advocate Mr.Sharma indicated that the petitioner was paid family pension for a period of 10 years and at the time of paying the family pension benefit, which the

petitioner received under contributory provident fund scheme, has been adjusted. Mr.Sharma submitted that a denial of a legitimate right of the petitioner, at a very advanced stage of life has resulted into lot of sufferance. Mr.Sharma submitted that the respondents may be directed to pay the pension to the petitioner and pay compensation for the difficulties that the petitioner is required to face because of the approach of the respondent authorities.

5. Learned A.G.P., Mr.L.B.Dabhi, appearing for respondents No.1, 3 and 5 has drawn attention of this Court to the affidavit in reply. He submitted that the petitioner must have received the benefit under the contributory provident fund scheme. The scheme of family pension became effective from 1971 and the petitioner's husband expired in the year 1968. Therefore, the benefit of the scheme cannot be claimed. However, learned A.G.P., indicated that by subsequent resolution, the Government has expanded the period of applicability but, was the option required to be exercised in favour of the family pension scheme, and the same has not been exercised by the petitioner within time and, therefore, the relief prayed for cannot be granted.

6.Learned Advocate Mr.Mishra appearing for respondent No.3 submitted that the District Development Officer has taken notice of the petitioner's case in light of prevailing laxity on part of the Chief Officer of the Municipalities. He submitted that in event the Court comes to the conclusion that the petitioner is entitled to benefit of family pension scheme, the responsibility would be of the State Government to make the payment and not of the Panchayat.

7.Learned Advocate Mr.Anshin Desai for the respondent No.4 has drawn attention of this Court to affidavit in reply filed on behalf of respondent No.4 particularly, Para No.5 of the affidavit in reply where, it is indicated that there was no slackness on part of the respondent No.4 in taking action.

8.Learned Advocate Mr.Mishra submitted that though respondent No.4 has tried to throw the burden of responsibility on respondent No.3, it has been countered by affidavit in rejoinder at para No.3 of affidavit in rejoinder.

9.The anxiety of the Court is to redress the grievances of the petitioner rather than to find fault and enter

into the inquiry as to who can be blamed for the delay and whether, delay was deliberate. Fact however remains that for whatsoever reasons, the case of the petitioner has not received due attention and the delay is certainly inordinate. These observations are required to be made for the reason that as would be indicated in paragraphs to follow, the petitioner is entitled to the benefit of family pension which she has been denied up-til now. It is fortunate that she is able to withstand the time.

10. As can be seen from the stand taken by respondents No.2 and 3, they do not dispute the entitlement of the petitioner to the family pension.

11.So far as the other respondents are concerned, it would be appropriate to note at the outset, that there is no dispute on the question of eligibility of the petitioner to family pension on ground of her deceased husband, being in service of Municipality and being treated at par with a civil servant. The resolution of the Government dated 17/10/1983 makes it clear that full time employees who were in service on 11/2/1969 and who retired or expired thereafter would be entitled to pension, if they were in service of Panchayat, after

serving formally with Nagarpalika. By virtue of that resolution it is expected that the option to opt for the pension scheme will have to be given within six months from the date of order. Subsequently, by resolution dated September 29, 1992, it was decided to grant benefit to all those employees who have exercised the option as per resolution dated 24/1/1992. Such option was expected to be exercised by employees in active service within period of six months. Those, persons who had already received benefit of contributory provident fund, would be required to repay the amount of contribution of provident fund alongwith interest thereon within stipulated time.

12.By resolution dated 12th July, 1996, it was resolved to give benefit of the scheme to employees who had retired or expired prior to 11/2/1969 but after 31/1/1963. This resolution also requires that option has to be exercised within six months and sent to the District Development Officer.

13.Undisputedly, the deceased husband of the petitioner served with Visavadar Nagar Palika from 7/11/1951 till 8/1/1968, the day on which he expired, had put in service of about 16 years and 2 months as an octroi

clerk. The appointment of the deceased was as per set up of permanent employee. By virtue of Government Resolution 12/7/1996 (Annexure-J), benefit of pension scheme would be available to such employee.

14. There is no dispute on the question that the family pension scheme was introduced from the year 1971. However, by subsequent, G.R. dated 24/3/1992, the said benefits have been extended to employees who retired or expired after 1/5/1960. This would bring the case of the petitioner squarely within the ambit of the scheme entitling the petitioner to family pension, apart from anything else.

15. It would be appropriate to observe that the denial of the request of the petitioner for family pension on the ground that option is not exercised within stipulated time, is unrealistic. When the resolution is passed in 1996 and benefit is extended to people who were retired retired / expired prior to 1969. There is no question to exercise option within six months from the order and, on this count, benefit could not have been denied.

16. It is thus clear that the petitioner is entitled to the benefit of the family pension scheme. It is not in dispute that the petitioner was paid pension for a

period of 10 years after adjusting the amount of contributory provident fund paid to her. Therefore, the amount would be payable from the date from which the benefit of pension was stopped.

17.Petition, is therefore, allowed, directing the respondents authorities to take appropriate steps in processing file of the petitioner, as early as possible, preferably before the end of year 2005, but not later than 31/1/2006 in any event and make the payment of the arrears of pension before 10/2/2006. Petition is accordingly allowed. Rule is made absolute. No costs.

(A.L.DAVE, J.)

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